IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.129 OF 2006

Maharashtra Mantralaya Sanlagna
Shasakiya Karmachari Cooperative
Credit society Ltd. & Ors. .. Petitioners

Versus

Bhagwan Chokha Waghmare & Ors. .. Respondents

Mr.A.Y.Sakhare, Senior Advocate i/b. YKS Legal for petitioners

Mr.V.C.Ghosalkar for respondent Nos. 1 to 9.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th January 2006.

P.C.

. This petition under Article 227 of Constitution of India challenges the order passed by the President, Maharashtra Coop.Appellate Court, Mumbai on 17th December 2005 in Appeal No.125 of 2004.

2. That appeal was preferred by respondents who are the original disputants in election dispute No.CC-I-399 of 2003.

3. Election dispute calls in question the election of original opponent Nos. 6 to 20 who are petitioners in this petition.

4. It appears from the record that dispute was placed before learned Member, Coop.Court and upon scrutiny of pleadings, he framed issues. The issues framed by him included an issue as to whether dispute is liable to be dismissed for non joinder of necessary parties.

5. It appears that an application was made by original opponent Nos. 5 to 16 invoking jurisdiction of the Coop.Court under Order 14 Rule 2 of C.P.C. and a request was made that this issue be tried as preliminary issue. A reply was filed and it was contended by disputants that the said issue cannot be tried as a preliminary issue as provisions of Order 14 Rule 2 would not apply to proceedings before Coop.Court. In any event, the said application is not maintainable as such an issue cannot be taken up for adjudication as a preliminary issue also because an election dispute under Cooperative Societies Act is not liable to be dismissed on the ground of non joinder of necessary parties as provisions and rules of the said Act are not on par with the provisions incorporated in the Representatives of Peoples Act, while trying election petitions.

6. However, upon a concession allegedly made

by Advocates that this issue be taken up and tried as a preliminary issue, learned Judge, Coop.Court by his order dated 7th August 2004 tried the said issue as preliminary issue. He upheld objections of petitioners herein and dismissed the election petition.

7. Aggrieved thereby, the Maharashtra State Coop.Appellate Court was approached by the original disputants by filing abovementioned appeal. Learned President has in the impugned order questioned the very basis for taking up for adjudication and deciding mid-stream an issue with regard to non joinder of necessary parties and faults Coop.Court for rendering a finding thereon by treating the same as preliminary issue. However, during the course of so observing, the learned President of Coop. Appellate Court has further held that dispute in question is not bad for non joinder of necessary parties.

8. Mr.Sakhare, learned Senior Counsel appearing for petitioners took me through the appellate court order and pointed out that once the conclusion is reached that whether dispute is liable to be dismissed for non joinder of necessary party, is an issue, which cannot be treated as a preliminary issue in the facts and circumstances of the present case, then, there was no occasion for the learned President to go into legality and validity of objection raised and pronouncing finally that the same is without any merit.

9. I find substance in this contention of Mr.Sakhare. Even the learned Counsel appearing for original disputants was not able to controvert this submission. Although, Mr.Sakhare would like me to go into the larger issue as to whether an election dispute and more so, in the case of a non specified coop.society can be

dismissed on the ground that necessary parties have not been joined thereto, I find that it is not necessary to go into this aspect any further. Once, the order of the lower appellate court setting aside the order of the Judge, Cooperative Court dismissing the dispute is liable to be upheld in the facts and circumstances of the present case, then none can dispute that all observations made with regard to the merits of the dispute as well as the objections about non joinder of necessary parties made in the impugned order are wholly unnecessary and academic. Once the issue with regard to the dispute being not maintainable on account of non joinder of necessary parties is liable to be tried along with other issues and if any decision pertaining to the same can only be, when final ordes are being delivered in the dispute, then interest of justice would be served by maintaining the order under challenge. However, all observations with regard to the merits of the objection, in the

order under challenge are set aside. The issue with regard to non joinder of necessary parties shall be tried with other issues and a finding would be rendered thereon consistent with the materials placed, in the final judgement.

10. In the light of the fact that the dispute in question is challenging elections, it is desirable that Coop.Court disposes of the same as expeditiously as possible and in any event by end of August 2006.

(S.C.DHARMADHIKARI, J)